



ICTR-2001-66-I
23-9-2004
(3054 - 3052)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3054
2004

TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before: Judge Khalida Rachid Khan

Registrar: Adama Dieng

Date filed: 19 August 2004

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THE PROSECUTOR

v.

Athanase SEROMBA

Case No. ICTR-2001-66-I

ORDER FOR THE TEMPORARY TRANSFER OF DETAINED WITNESSES
Rule 90 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Sylvana Arbia
Jonathan Moses
Astou Mbow

Counsel for the Defence:

Alfred Pognon

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the Tribunal),

SITTING as Trial Chamber III (the Chamber), Judge Khalida Rachid Khan, designated in accordance with Rule 73(A) and pursuant to Rule 90 *bis*(B) of the Rules of Procedure and Evidence (the Rules).

SEIZED of the Prosecutor’s Motion for the temporary transfer of detained witnesses under Rule 90*bis* of the Rules of Procedure and Evidence, filed on 12 January 2004.

CONSIDERING the Statute (the Statute) and the Rules of Procedure and Evidence of the Tribunal (the Rules), particularly, in its Rule 90 *bis*.

HEREBY DECIDES as follows, solely on the basis of the written brief and documents attached thereto.

1. The Prosecutor’s Motion requests the Chamber to order, pursuant to Rule 90 *bis* of the Rules, the transfer of eight (8) of its witnesses known by the pseudonyms CBO, CBQ, CBT, CBR CBT, CBU, CDK, CDL and CNJ, currently detained in Rwanda, to testify in the instant case for a period that shall be left to the discretion of the Chamber. The Prosecutor attached to the Motion a letter from the Minister of Justice and Institutional Relations of Rwanda dated 8 July 2004. In the letter, the Minister confirmed that the presence of the witnesses concerned was not required for any criminal proceedings in progress in Rwanda during the period they are required by the Tribunal and that their transfer to Arusha would not extend the period of their detention.

2. Rule 90 *bis*(B) of the Rules stipulates in its first two paragraphs that:

- (B) The transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions have been met:
 - (i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
 - (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

3. To order the transfer of detained witnesses, the Judge or Chamber seized is required to verify the two conditions set out under Rule 90 *bis*(B) of the Rules. Since the conditions for such verification are not specified in the Rules, the Judge or Chamber enjoys broad powers of discretion in that regard. In the Chamber’s opinion, a letter from the Minister of Justice and Institutional Relations, who is the most appropriate authority to guarantee such information on the status of the detainees, fully meets both conditions as prescribed, namely, that the detainees whom the

3052

Prosecutor wishes to call are not required for any criminal proceedings in Rwanda, and that their stay at the Tribunal will not prolong the period of their detention, hence the need to issue the transfer order.

4. Since trial in the instant case is scheduled to commence on 20 September 2004, and the presentation of the Prosecution's case is expected to last some twenty days, the eight (8) witnesses, known by the pseudonyms CBO, CBQ, CBR, CBT, CBU, CDK, CDL and CNJ, are required to be present in Arusha not later than 19 September 2004, and for a period not exceeding one month.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

I. ORDERS, pursuant to Rule 90 *bis*(B) of the Rules, that the protected witnesses, known by the pseudonyms CBO, CBQ, CBR, CBT, CBU, CDK, CDL and CNJ, be transferred to Arusha, not later than 19 September and for a period of one month;

II. ORDERS the Registrar to ensure that their conditions of detention in Arusha are at least the same as their conditions of detention in Rwanda;

III. Consequently, **REMINDS** the Registrar of his obligations under Rule 90 *bis* of the Rules;

IV. Further, **REQUESTS**, the Government of the Republic of Rwanda to comply with the present Order, to cooperate with the Prosecutor and the Registrar and, in conjunction with the Government of the United Republic of Tanzania, the Registrar and the Victims and Witnesses Support Section of the Tribunal, to take the necessary measures to implement the present decision.

Arusha, 19 August 2004

[Signed]
Khalida Rachid Khan
Judge

[Seal of the Tribunal]

